IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 18982 of 2005

Between:

Mr. M.S.V.M. Rao, S/o. M.V.H.Rao,
R/o. Rachur Village, Batiprolu Mandal, Guntur District.

..... PETITIONER

AND

1. The Deputy Commissioner, Endowments Department, Guntur.
2. The Assistant Commissioner, Endowments Dept., Guntur.
3. The Manager, Sri Gokarneshwara Swamivaru Devasthanam,

Dulipudi Vill, Nagaram Mandal, Guntur District.

.....RESPONDENTS

The Court made the following:

ORDER:

Challenging the action of the respondents in issuing proceedings bearing RC.No.A1/6668/2005, dated 02.08.2005, requiring the petitioner to apply for being made a trustee of Sri Gokarneshwara Swamivari Devasthanam, Dulipudi Village, Nagaram Mandal, Guntur District, even though he has been duly recognized as the member of the Founder Family of the said Temple, the present writ petition has been filed.

The main grievance of the petitioner is that as he has been recognized as member of the Founder family of the temple in question, there is no need for him to make an application for being made a trustee of the temple.

The learned counsel for the petitioner contends that under Section 17 (1) of the Endowments Act, 1987, the appropriate authority has to appoint one of the trustees from the Founder Family, if he is qualified, and therefore, there is no need for the authority to call for an application from the petitioner to constitute the Trust Board, and hence, he prays to allow the writ petition.

On the other hand, the learned standing counsel for the respondents contends that since the Trust Board is constituted for a period of two years, the petitioner has to make an application for being made a trustee as per the Act, and it is for the authority to decide whether he is qualified or not for being made a trustee.

The learned counsel for the petitioner placed a strong reliance reported in ***Pannalal Bansilal Patil and others v. State of Andhra Pradesh and another***, which reads thus:

> *"Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfillment of the objective with which it was founded unless, in due course, foul in its management is provided, therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same also generate greater influence in proper and efficient management of the charitable re religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tents, customs and sampradayams of the founder of the charitable or religious institution or endowment or*

specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive Officer, being a Government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable re religious institution or endowment or specific endowment thereof in future. It would add incentive to establish similar institutions.

The above decision would indicate that if he is a member of the Founder Family, he is duly representing the temple. The learned counsel for the petitioner also relied on a decision reported in ***Government of A.P., represented by Commissioner of Endowments, Hyderabad v. G. Rajendranath Goud, Hereditary Trustee, Sri Venkateswara Swamy Temple, Chikkadapalli*****,** which reads as follows:

"In other words, such an "honour" the hereditary trustee would continue to enjoy without any honorarium' or any kind of rights, which were earlier recognized as hereditary rights. The other saving as provided under Section 17 (1) of the Endowments Act, 1987, is that whenever a trust is to be constituted, one of the trustees shall be from the family of the founder trust, if he is not disqualified. As per the provision the 'honour' is saved to the family of the founder of the trust to occupy one seat in the trust board by virtue of such hereditary right of succession without being appointed as a trustee in the manner prescribed for other trustees, as long as such trustee of the founder family is qualified to be a trustee. If that is so, the respondent No.1 would be entitled to all the "honour" in the religious ceremonies and also right to become one of the members of the trustees by virtue of being trustee from the founder family and such right cannot be denied to respondent No.1"

The above decision would indicate that the honour of the Founder family of the trustee can be appointed as a trustee, if he is otherwise qualified.

Now, the only issue that arises in this case is as to whether the petitioner has to make an application when the concerned authority called for applications under the impugned proceedings dated 02.08.2005.

Section 17(1) of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 contemplates the procedure for making appointment of trustees, which reads thus:

> ***Procedure for making appointments of trustees and their term***:- *(1) In making the appointment of trustees under Section 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder.*
>
> *Provided that one of the trustees shall be from the family of the founder, if qualified.*

The above provision makes it clear that one of the trustees shall be from the family of the founder, if he is qualified. So, whenever the trust board is constituted, certainly the member of the founder family has to be tested as regards the qualification. Under Rule 5(1) of the Act provides giving of declaration by the member of the founder family. Even the member of the founder trustee has to give a declaration, necessarily he has to submit his explanation for the purpose of testing whether he is qualified or not.

Therefore, in that view of the matter, the impugned proceedings does not suffer from any legal infirmities warranting interference of this Court under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No costs.

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(K.C. BHANU, J)

Date: 29.08.2005

Note: Issue C.C. in two days.

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